

DA

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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

FILE: LIN 03 059 50243

Office: NEBRASKA SERVICE CENTER

Date: APR 12 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner in this matter is an artist management group and talent agency. The beneficiary is a dancer in a Russian folk music and dance ensemble, called Zabava. The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) seeking to extend the validity of the petition for an additional one-year period under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii). The petitioner seeks to continue to employ the beneficiary temporarily to perform at various locations in the United States.

In a request for evidence the director requested the petitioner to submit evidence that the beneficiary's stay as a P-3 nonimmigrant is temporary and evidence that all her performances are culturally unique. In reply to the request for evidence, counsel for the petitioner stated that the beneficiary has maintained and will continue to maintain real estate and a residence in the Ukraine. As evidence that the beneficiary is in the United States temporarily and has a foreign residence that she has no intention of abandoning, the petitioner submitted a translation of a job offer in the Ukraine extended to the beneficiary. The petitioner also submitted evidence that the beneficiary's performances are culturally unique. As evidence that the event for which the beneficiary initially entered the United States has not been completed, the petitioner submitted performance contracts and a revised itinerary identifying dates, and venues. The petitioner submitted copies of contracts for 2003-2004 to indicate that the beneficiary continues to perform as proof that the event for which she was originally admitted has not been completed.

The director denied the petition, finding that the event or events for which the beneficiary had been admitted were concluded, and that the beneficiary did not have a foreign residence which she has no intention of abandoning.

On appeal, counsel for the petitioner submits a brief arguing that the director's decision is arbitrary and capricious. Counsel for the petitioner asserts that the evidence is sufficient to establish that the beneficiary's performances are culturally unique. On appeal, counsel for the petitioner failed to address the issue of whether the beneficiary's stay is temporary or whether she has a foreign residence that she has no intent of abandoning.

Section 101(a)(15)(P)(iii) of the Act provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

- (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

The regulation at 8 C.F.R. § 214.2(p)(13) provides:

Extension of visa petition validity. The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I-129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed only if the validity of the original petition has not expired.

The regulation at 8 C.F.R. § 214.2(p)(3) defines an event as follows:

Competition, event or performance means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement. . . . An athletic competition or entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

CIS records indicate that the beneficiary was approved for a change of status from a B-2 nonimmigrant visitor for pleasure to P-3 visa status in July 1999. The validity of the subsequent P-3 petition was extended from December 31, 2000 through December 31, 2001 and again from January 1, 2002 through December 31, 2002. The record establishes that the beneficiary is performing the same activity for which she was originally provided P-3 nonimmigrant classification. Accordingly, the validity of the petition may be extended.

The director denied the petition, in part, because the petitioner failed to establish that the beneficiary has a foreign residence which she has no intention of abandoning as required by Section 101(a)(15)(P) of the Act, 8 U.S.C. § 1101(P); 8 C.F.R. § 214.2(p)(1)(i); 8 C.F.R. § 214.2(p)(1)(ii)(C). On appeal, counsel asserts that the beneficiary maintains real estate in Ukraine and has a job offer to work in Ukraine after her tour ends in the United States. No evidence was submitted regarding the real estate in Ukraine. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence reflects that the beneficiary has been living and working in the United States since 1998, almost five years ago.¹ There is no corroborating evidence of record indicating that the alien maintains a foreign residence, e.g. community and family ties, employment, bank accounts and other investments, voting and driving privileges, etc. In review, the petitioner has failed to overcome this ground for the director's denial.

Beyond the decision of the director, the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) provides that where the agent for the beneficiary is the petitioner, the petition is subject to the following conditions:

(1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the

¹ The beneficiary was initially admitted to the United States in B-2 visa status on July 5, 1998. She received P-3 nonimmigrant status effective July 5, 1999.

beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

In the instant case, the petitioner failed to comply with the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) because the contract between the petitioner agent and the beneficiary fails to state the wage offered. Since the appeal will be dismissed for the reason stated above, this issue will not be discussed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has failed to meet that burden.

ORDER: The appeal is dismissed.